IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Government Appeal No. 192 of 2001
(Old No.1976/1998)

State of U.P. **…Appellant.**

Versus

1. Prem, S/o Harpal,
2 Ompal alias Oma, S/o Harpal,

Both resident of Mohalla – Tikoha, P.S. – Manglor Niwa, Seemhatoli, P.S. – Deoban.

3. Birbal, S/o Munshi, R/o village – mahtali, P.S. – Deoband, District – Saharanpur.

…Respondents.

Coram:
Hon'ble M.M. Ghildiyal,J
Hon'ble B.C. Kandpal, J.
(PC)

This appeal has been preferred by the State against judgment and order 29.04.1998 passed learned I Additional Sessions Judge, Hardwar in Sessions Trail No. 34 and 35 of 1997 (State Vs. Prem and others) under section 302/34 IPC and under section 25 of Arms Act, thereby acquitting the accused respondents no. 1 to 3.

We have heard learned AGA for appellant and perused the judgment and order passed by the court below.

The court below has categorically recorded a finding that the prosecution could not establish the motive of the accused respondents behind the murder of the deceased. There is no cogent and plausible evidence. Further, the evidence of eye witnesses adduced by the porsecution has also been assessed by the Trail Court in detail. After having sound assessment of

the evidence, the Trail Court has disbelieved the testimony of the witnesses produced by the prosecution.

The Trial Court has also observed that certain latches are there in the investigation of the case. Although latches made in the investigation do not adversely affect the prosecution case, but for the reasons recorded by the Trial Court that the evidence adduced by the prosecution is not reliable, we do not find any justified ground to interfere with the judgment and order passed by the Trail Court.

In view of the above, we are of the opinion that findings recorded by the learned Trial Court are neither perverse nor unreasonable and are not liable to be disturbed.

Appeal lacks of merit, as such, is dismissed *in limine.* Impugned judgement and order dated 29.04.1998 passed by I Additional Sessions Judge, Hardwar is hereby confirmed.

(B.C. Kandpal, J) **(M.M. Ghildiyal, J)**

November 9, 2006
SKSharma